IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2025-151154

(1) REPORTABLE: YES/~~NO~~

(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~

(3) REVISED: YES/~~NO~~

DATE 12/06/2026

SIGNATURE

In the matter between:

RACHELLE CROMHOUT N.O. **1st Applicant**
(Identity number: 7[...])

CECIL LIVERSAGE PARSONS N.O. **2nd Applicant**
(Identity number: 7[...])

KENDRIK EDWARD NEWPORT N.O. **3rd Applicant**
(Identity number: 8[...])
As representative of:
CAPITAL LEGACY FIDUCIARY SERVICES (PTY) LTD N.O.
(Registration number: 1995/009487/07)

(In their official capacities as Trustees for the time being of the Cromhout Family Trust: IT 0002713/2013)

and

MARTIN MANQOBA MASILELA **1st Respondent**
(Identity number: 8[...])

LIZIWE MASILELA **2nd Respondent**
(Identity number: 7[...])

This order is made an order of court by the Judge whose name is reflected herein, duly stamped by the Registrar of the Court, and is submitted electronically to the parties or their legal representatives by email. This order is further uploaded to the electronic file of this matter on Caselines by the Judge or her Secretary. The date of this order is deemed to be 12 June 2026.

JUDGMENT

MENTZ AJ:

[1] This matter came before me in the opposed Insolvency Court on the return day of a *rule nisi* granted on 4 November 2025, provisionally sequestrating the joint estate of the first and second respondents, who are married in community of property. The rule was later extended twice to afford the respondents an opportunity to file answering papers and heads of argument. After hearing argument, I reserved judgment and extended the *rule nisi* until delivery of this judgment.

[2] The applicants, in their capacities as trustees of the Cromhout Family Trust, seek a final order of sequestration of the respondents' joint estate. The application is founded on an alleged act of insolvency in terms of section 8(b) of the Insolvency Act 24 of 1936 (*'the Insolvency Act'*). The central issue is whether the applicants established an act of insolvency under section 8(b) of the Insolvency Act by relying on a *nulla bona* return which, to the sheriff's knowledge when rendered, did not accurately reflect the material events as they occurred.

[3] The applicants obtained judgment in this court against the first respondent on 5 May 2025 in the sum of R300 000.00, together with interest and costs. A writ of execution was thereafter issued.

[4] The applicants rely on a *nulla bona* return of service issued on 20 August 2025 by the deputy sheriff for Kempton Park and Tembisa to establish an act of insolvency. The relevant part of the return reads:

> *"It is hereby certified:*
> *That on this 20th day of August 2025 at 16:39 at ERF 2[...] M[...] A[...] STREET, MIDSTREAM, CENTURION being the defendant's residential address, payment of the judgment debt in the amount of R 300 000.00, my costs plus VAT was demanded from MARTIN MANQOBA MASILELA wherewith to satisfy the warrant. MARTIN MANQOBA MASILELA declared that he has no money or disposable movable property wherewith to satisfy the said warrant. No disposable movable assets were pointed out to me, or could after a diligent search and enquiry be found at the given address. It is further certified that MARTIN MANQOBA MASILELA was requested to declare whether he owns immovable property which is executable, on which the following reply was furnished: NO.*
>
> *That simultaneously with the execution, a copy of the warrant of execution was served by handing it to MARTIN MANQOBA MASILELA personally after the original document was displayed and the nature and contents thereof explained to him. Rule 4(1)(a)(i).*
>
> *THUS MY RETURN IS ONE OF NULLA BONA.*"

[5] When the provisional sequestration order was granted, no answering papers had yet been filed. On its face, the *nulla bona* return appeared to establish the requisite act of insolvency contemplated in section 8(b) of the Insolvency Act, and thus furnished the basis upon which the provisional order was obtained.

[6] The picture changed materially once the respondents delivered their answering affidavit on 10 February 2026. The late filing of that affidavit is

condoned. The first respondent, as deponent to the answering affidavit, states that the deputy sheriff did not attend at the respondents' home on 20 August 2025 as stated in the *nulla bona* return. According to him, the deputy sheriff telephoned him and arranged that they meet at the Kentucky Fried Chicken outlet at the Lifestyle Centre in Rooihuiskraal, Centurion. There he signed documents produced by the deputy sheriff and took photographs reflecting the location.

[7] The first respondent further states in the answering affidavit that he has movable assets, including furniture and motor vehicles, as well as a house, and that had the deputy sheriff attended properly at the residence, these assets would have been pointed out. The second respondent also stated in court that, were the sheriff to attend at their residence, they could point out assets sufficient to satisfy the judgment debt, as they are, according to her, not insolvent. However, the respondents also dispute the underlying debt and in May 2026 launched a rescission application to rescind the judgment granted against them on 5 May 2025, although at the time of the hearing the judgment remains extant.

[8] In reply, the applicants annexed an affidavit by the deputy sheriff, Mr Rishen Durgapersat, who rendered the *nulla bona* return. He confirms the first respondent's version that they met at the KFC on 20 August 2025. He states that he had previously attempted to execute at the respondents' residence on 26 June 2025, 5 July 2025 and 8 July 2025, and that, because no one was found there, he arranged to meet the first respondent at the KFC. He further states that, on a previous occasion, he found the door open but received no response when knocking or calling out, and that, based on what he had observed at the premises, he estimated the value of the goods if sold in execution at approximately R31 540.

[9] It is therefore apparent that the deputy sheriff's affidavit confirms, rather than cures, the central defect in the return. It is common cause that the return wrongly records that the demand for payment and the first respondent's declaration occurred at the residential address on 20 August 2025. They did not. Those events occurred at the KFC.

[10] The first respondent was not asked on 20 August 2025 to point out movable assets at his residence to satisfy the judgment debt, as indicated in the *nulla bona* return, because the deputy sheriff did not meet him there. Nor did the deputy sheriff conduct any diligent search and enquiry for assets at the residence on 20 August 2025, because he was not at the premises on that day.

[11] The respondents also annexed a transcript of the first respondent's conversation with the deputy sheriff at the KFC on 20 August 2025, in which he is recorded as saying: *'I'm going to leave it as this address, I'm not going to say I met you here and stuff. I'm going to leave it at that address'*. That statement indicates a conscious decision not to record the true place at which the relevant events occurred in the *nulla bona* return. The deputy sheriff does not meaningfully engage with that allegation in his affidavit.

[12] A sheriff and deputy sheriff are officers of the court. Their returns are routinely relied upon by litigants and courts as *prima facie* proof of the facts stated therein. A *nulla bona* return in particular may have grave consequences, because it constitutes *prima facie* proof that an act of insolvency has been committed, thereby exposing a debtor to provisional or final sequestration. Accuracy, candour and procedural integrity are essential to that role and to the administration of justice.

[13] In my view, the *nulla bona* return did not merely contain an immaterial inaccuracy capable of condonation. It materially misstated where the writ was executed, where the demand was made, and the factual basis upon which it was certified that no sufficient assets were pointed out or found. Those misstatements go to the foundation of the applicants' reliance on section 8(b) of the Insolvency Act.

[14] Mr Nysschens, who appeared for the applicants, submitted that, although the information contained in the *nulla bona* return may not be correct in every respect, the substance remains that the first respondent acknowledged to the

deputy sheriff that he could not pay the debt. It was argued that the return should therefore still be treated as establishing an act of insolvency. I was further referred to the matter of *Wilken and Others NNO v Reichenberg*[1] in support of the contention that personal service need not take place at the debtor's residence or place of employment and can be effected elsewhere.

[15] The issue here is not whether, in some circumstances, a demand may competently be made at a place other than the debtor's residence. It is whether a court may properly rely on an official return by an officer of the court which materially misrepresents what in fact occurred.

[16] There is only one *nulla bona* return of service before this court, and it is the return of 20 August 2025 containing information that was, to the sheriff's knowledge, false. The validity of that *nulla bona* must be assessed as a whole; the court cannot approach it piecemeal by holding that, in part, it still establishes an act of insolvency while, viewed in its entirety, it is tainted by the false information it contains.

[17] In my view, once it is established that the return materially misstated the facts relied upon to establish an act of insolvency under section 8(b), it cannot be treated as a valid *nulla bona* return for that purpose, and its ordinary evidential value falls away. I therefore find that the return rendered on 20 August 2025 is invalid.

[18] The applicants were initially entitled to rely on the deputy sheriff's return, but once the true facts emerged, that return could no longer sustain the provisional order or justify a final sequestration order.

[19] The applicants also sought in reply to rely on a letter dated 23 January 2026 from the respondents' attorneys, in which a counter-offer of R325 000.00 in full and final settlement of the debt, payable over twelve months, was made. They contended that this constituted a further act of insolvency. Reliance was

---

[1] 1999 (1) SA 852 (W)

placed on *ABSA Bank Ltd v Hammerle Group*[2] in support of the proposition that, in insolvency proceedings, an admission or proposal contained in 'without prejudice' correspondence may in appropriate circumstances be admissible as evidence of an act of insolvency.

[20] It is trite that an applicant in motion proceedings must make out its case in the founding affidavit. In their founding affidavit, the applicants relied only on the *nulla bona* return of 20 August 2025 as the alleged act of insolvency. They did not seek leave to supplement their founding papers so as to introduce a later act of insolvency and give the respondents an opportunity to answer it fully.

[21] In light of the finding that the *nulla bona* return is invalid, the applicants cannot cure that defect by seeking to rely in their replying affidavit, for the first time, on a later and different alleged act of insolvency.

[22] Put differently, had the court that granted the provisional order in November 2025 been aware that the *nulla bona* return did not reflect what actually occurred on 20 August 2025, and that the material allegations in the return concerning attendance at the residence, diligent search, and the debtor's failure to point out assets at that address were false, there would have been no proper basis upon which to grant the provisional order.

[23] The applicants have established that they hold an unsatisfied judgment against the first respondent, which at the time of hearing had not been rescinded. That, however, is not enough. For a final sequestration order to be granted they were required to establish one of the jurisdictional facts set out in section 12 of the Insolvency Act[3], including an act of insolvency or insolvency

---

2 2015 (5) SA 215 (SCA)

3 Section 12 of the Insolvency Act 24 of 1926 reads:

"(1) If at the hearing pursuant to the aforesaid rule nisi the court is satisfied that-

(a) the petitioning creditor has established against the debtor a claim such as is mentioned in subsection (1) of section nine; and
(b) the debtor has committed an act of insolvency or is insolvent; and
(c) there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated, it may sequestrate the estate of the debtor.

itself. On these papers they have failed to prove the act of insolvency on which their case is founded.

[24] The application accordingly falls to be dismissed.

[25] As to costs, the applicants acted on the official *nulla bona* return placed before them and were, at that stage, entitled to do so when they launched the application. The respondents, on the other hand, also contributed to the delay in finalising the matter by entering the proceedings late and filing their answering papers and heads of argument out of time, which made it necessary to extend the *rule nisi* twice. In these circumstances I am of the view that it is appropriate not to make any order as to costs.

[26] The deputy sheriff's conduct is concerning. A *nulla bona* return that contains information known by the sheriff or deputy sheriff to be false affects not only the litigants, but also the integrity of the court process and the proper use of judicial resources. In these circumstances, this judgment should be brought to the attention of the South African Board for Sheriffs for investigation.

I accordingly make the following order:

1. The application is dismissed.

2. The provisional order for the sequestration of the joint estate of the first and second respondents granted on 4 November 2025 is set aside.

3. No order as to costs.

4. The applicants' attorney is directed to serve this judgment on the South African Board for Sheriffs for investigation.

---

(2) If at such hearing the court is not so satisfied, it shall dismiss the petition for the sequestration of the estate of the debtor and set aside the order of provisional sequestration or require further proof of the matters set forth in the petition and postpone the hearing for any reasonable period but not sine die."

_____

MENTZ AJ

ACTING JUDGE OF THE HIGH COURT

For the applicants	:	Mr J Nysschens (Attorney)
Instructed by	:	Johan Nysschens Attorneys
For the respondents	:	First and Second Respondents in person
Instructed by	:	N/A

Date heard: 8 June 2026

Judgment delivered: 12 June 2026